IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY and
On Behalf of all Other Persons
Similarly Situated,

Petitioner,

vs.

ITASCA COUNTY, MINNESOTA,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Minnesota

BRIEF FOR RESPONDENT IN OPPOSITION

GERALD L. SECK
Leech Lake Reservation
Legal Services Project
Box 425
Cass Lake, Minnesota 56633
Tel: (218) 335-2223

ATTORNEY FOR PETITIONER

WARREN SPANNAUS
Attorney General

C. H. LUTHER
Deputy Attorney General
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
Tel: (612) 296-3421

ATTORNEYS FOR RESPONDENT

TABLE OF AUTHORITIES

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OPINION BELOW

The Opinion of the Minnesota Supreme Court is reported at ___ Minn. ___, 228 N.W. 2d 249 (1975).

JURISDICTION

Petitioner, in his Petition for Writ of Certiorari, has sought to invoke the jurisdiction of this Court under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Does Public Law 83-280, 18 U.S.C. § 1162, and 28 U.S.C. § 1360, confer upon Itasca County, a political subdivision of the State of Minnesota, the power to impose a personal property tax on an enrolled Chippewa Indian with respect to a mobile home owned and occupied by him and located inside the Leech Lake Indian Reservation, on land being held in trust for the Chippewa Tribe by the United States?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The pertinent provisions of the United States Constitution and the statutes involved are adequately set forth in the Petition at pages 3-13.

STATEMENT OF THE CASE

The facts of this case have been stipulated to and are not in dispute. Russell Bryan, an enrolled member of the Minnesota Chippewa Tribe, owns a mobile home which is located inside the Leech Lake Indian Reservation on land held in trust by the United States not for him but for his tribe. Mobile homes are taxable as class 2A personal property in Minnesota pursuant to Minn. St. §§ 168.012, subd. 9, 272.01, subd. 1, and 273.13, subd. 3 (1971). In accordance with this statutory authority, Itasca County assessed a personal property tax liability totaling $147.95 against Bryan for the years 1971 and 1972.

On September 11, 1973, Bryan commenced an action in Minnesota District Court against Itasca County and the State of Minnesota seeking both declaratory and injunctive relief against the assessment and collection of such tax. On July 29, 1973, the State of Minnesota was dismissed from the action. On December 8, 1973, the District Court held that the State of Minnesota and its political subdivisions have the power to tax Indians within the Leech Lake Reservation and consequently awarded judgment in favor of defendant Itasca County for the full amount of the tax.

On February 13, 1974, Petitioner appealed from this judgment to the Minnesota Supreme Court. On March 28, 1975, the Minnesota Supreme Court affirmed the decision of the District Court.

Petitioner is now seeking a Writ of Certiorari from this Court to review the judgment of the Minnesota Supreme Court.

ARGUMENT

Why The Writ Should Be Denied

I.

There Is No Conflict Between The Decision Of The Minnesota Supreme Court On This Issue And The Decisions Of Any Other Court.

This Court, in exercising its discretion as to whether or not to grant review of a case on writ of certiorari, has

usually looked to several factors. One of the most important of these factors has been the presence of a conflict of decisions among the lower courts. Supreme Court Rule 19; MacGregor v. Westinghouse Co., 329 U.S. 402, 67 S.Ct. 421, 91 L.Ed. 380 (1946); Sanchez v. Borras, 283 U.S. 798, 51 S.Ct. 490, 75 L.Ed. 1421 (1930).

In this case no such conflict of decisions exists. In fact, every reported state and federal opinion on the issue raised in this case has come down squarely in favor of the position that Public Law 280 specifically grants the states named therein the power to impose taxes, not otherwise prohibited, within the Indian country described therein.

It should not be surprising that such a uniformity exists in the decisions. The language of Public Law 280 is so clear that it should not be subject to a charge of vagueness concerning the taxation powers granted to the states within Indian country. Without going deeply into the merits of the case at hand, it is enough to say that Public Law 280, 28 U.S.C. § 1360 (a) clearly states that ". . . those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory: . . ." After this broad and plenary grant of power Congress went on in paragraph (b) of the same section to

prohibit the states from taxing certain property ". . . that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; . . ." This language alone makes it obvious that Congress intended to grant those states named in the Act full power to enforce all their civil laws, revenue and otherwise, except for those expressly prohibited by paragraph (b). When this language is read in conjunction with the other sections of Public Law 280, notably 18 U.S.C. § 1162, and the legislative history surrounding the passage of Public Law 280, the preceding conclusion can only be reinforced.

The decision of the Minnesota Supreme Court in this case is that Public Law 280 grants to the State of Minnesota and its political subdivisions the right to impose a personal property tax upon a mobile home owned and occupied by an enrolled Chippewa Indian who resides within a reservation upon land held in trust by the United States for the Chippewa tribe. The Minnesota Supreme Court was therefore not in conflict with the District Court of Minnesota which reached the same conclusion in its Memorandum dated December 8, 1973.

Neither is the Minnesota Supreme Court in conflict with the decision of the one other State Supreme Court which has passed on the issue. In Tonasket v. State of Washington, 79 Wash. 2d 607, 488 P. 2d 281 (1971), remanded from the United

States Supreme Court, 411 U.S. 451, 93 S.Ct. 1941, 36 L.Ed. 2d 385 (1973) and reconsidered in 84 Wash. 2d 164, 525 P. 2d 744 (1974); appeal dismissed ___ U.S. ___, 95 S.Ct. 1108, 43 L.Ed. 2d 387 (1975), the Supreme Court of Washington faced the question of whether an Indian tribe or its members, after accepting the criminal and civil jurisdiction of a state pursuant to Public Law 280, were subject to that state's power to tax the sale of cigarettes within the reservation boundaries by an Indian seller to nonreservation customers. In its first opinion that court held that the authorization given to the state by Public Law 280, was plenary, subject only to the limitations expressed therein, and that the authorization included the power to levy excise taxes upon the sale of cigarettes by Indians within the reservation. This holding was not disturbed by either this Court in its remand, or by the Washington Supreme Court in its second opinion.

The one federal court case in which the issue here involved was faced was Omaha Tribe of Indians v. Peters, 516 F. 2d 133 (8th Cir., 1975), in which the Eighth Circuit affirmed the decision of the Federal District Court for the District of Nebraska reported in 382 F. Supp. 421 (D. Neb., 1974). The issue in that case was whether Public Law 280 granted a state the power to levy a state income tax upon the income derived by an Indian from employment on a

reservation. The District Court, reasoning from both the text of the statute and from its legislative history, held in the affirmative.

Petitioner, in his Petition for a Writ of Certiorari, has attempted to show that there is a "judicial battle" (Petitioner's Brief, p. 29) among the lower courts of this land over the proper construction of Public Law 280's language regarding state power to tax Indians. This is simply not the case. Every court, state or federal, trial or appellate, which has passed on the question has uniformly agreed with the Supreme Court of Minnesota that Public Law 280 does grant to certain states the power to impose taxes, not otherwise prohibited, on certain Indians.

Petitioner has also attempted to show in his petition that a number of lower courts are "currently struggling with" the same issue presented by this case. (Petitioner's Brief, p. 28). However, he can only cite two currently pending cases to support this proposition. Wildcat et.al. v. Adamany et.al., No. 74C226 (currently before the Federal District Court for the Western District of Wisconsin) and Quileute Indian Tribes et.al. v. State of Washington, No. Civ. 747619 (currently before the Federal District Court for the Western District of Washington). The existence of these two cases does not indicate a "struggle" involving numerous courts; and it certainly does nothing at all to establish

the proposition that some court might in the future disagree with the Minnesota Supreme Court's decision in Bryan v. Itasca County.

Even if these currently pending cases were to be decided differently from the decision in this case, that would only show that the split among the lower courts is just now beginning to grow. If such a split in the decisions is about to occur, this Court should wait until all the verdicts are in before itself reviewing the issue. Only then can it have the inestimable aid of fully reasoned opinions supporting the different judicial conclusions. It should be noted that the only Federal Circuit Court to rule on this issue so far has been the Eighth Circuit. By not granting a writ of certiorari in Bryan v. Itasca County, and instead waiting for the question to ripen, this Court may soon have the benefit of the opinions of the Seventh Circuit (Wildcat et.al. v. Adamany, supra) and of the Ninth Circuit (Quileute Indian Tribes, supra).

II.

There Is No Conflict Between The Decision Of The Minnesota Supreme Court On This Issue And The Decisions Of The United States Supreme Court.

This Court has never directly decided the issue presented by Bryan v. Itasca County. Indeed, in the recent case of McClanahan v. State Tax Commission of Arizona, 411

U.S. 164, 93 S.Ct. 1257, 36 L.Ed. 2d 129 (1973), this Court (in footnote 18 to the Opinion) specifically refused to express its views on the question. Therefore, there can be no conflict at all between the Minnesota Supreme Court in the case at hand and this Court's previous decisions.

If anything, this Court has already expressed a view that Public Law 280 so clearly grants to certain states the power to tax certain Indians, that no important federal question is raised when a State Supreme Court adopts such a construction. This conclusion is based on this Court's dismissal of an appeal from the second 'Tonasket' opinion. In that case the Washington Supreme Court reaffirmed its original holding that Public Law 280 granted the State of Washington authority to extend its civil excise tax laws to Indian retailers, who serve non-Indian consumers, within an Indian reservation. An appeal from this decision was dismissed by this Court for want of a substantial federal question. Tonasket v. State of Washington, 84 Wash. 2d 164, 525 P. 2d 744, appeal dismissed, ___ U.S. ___, 95 S.Ct. 1108, 43 L.Ed. 2d 387 (1975).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WARREN SPANNAUS
Attorney General

C. H. LUTHER
Deputy Attorney General
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
Tel: (612) 296-3421

ATTORNEYS FOR RESPONDENT